

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

**CULINARY WORKERS UNION LOCAL 226
affiliated with UNITE HERE, AFL-CIO¹**

Employer

and

Case 28-RC-6381

FEDERATION OF UNION REPRESENTATIVES (FOUR)²

Petitioner

DECISION AND DIRECTION OF ELECTION

Federation of Union Representatives (FOUR) seeks an election within a unit comprised of approximately 65 full-time and regular part-time Organizers, Computer Support employees, Grievance Department employees, Orientation employees, Dispatchers, Member Services employees, and Research Department employees employed by the Culinary Workers Union Local 226 affiliated with UNITE HERE, AFL-CIO (Employer) at its facility located in Las Vegas, Nevada. Contrary to the Petitioner, the Employer argues that any unit found appropriate must include Data-Entry employees, Cashiers, Accounting Department employees, Secretaries, Political Department employees, Maintenance employees, and seven employees it refers to as Trainers. The unit proposed by the Employer would include approximately 82 employees. The Petitioner opposes the inclusion of Data-Entry employees, Cashiers, Accounting Department employees, and Secretaries on the basis that they are confidential employees. The Petitioner opposes the inclusion of Political Department and Maintenance employees on the basis that they do not share a community-of-interest with the petitioned-for unit. Finally, the Petitioner opposes the inclusion of the Trainers (it sometimes refers to these positions as “leads” or “leads in training”) on the basis that they are supervisors as defined in the Act.

For reasons discussed more fully below, I make the following findings. First, I find that the Employer’s Data-Entry employees and Cashiers are not “confidential” employees and should be included in the unit. Second, I find that the Political Department and Maintenance employees share a community-of-interest with the petitioned-for unit and should be included in the unit. Third, I find that the Accounting Department employees and the Secretaries are not confidential employees but office clerical employees and should be excluded from the unit. Finally, I find that, based on the current record, there is insufficient evidence to

¹ The name of the Employer appears as corrected at the hearing.

² The name of the Petitioner appears as corrected at the hearing.

determine whether the Trainers are supervisors within the meaning of Section 2(11) of the Act; therefore, I will permit them to cast ballots in the election, subject to challenge. There are approximately 67 employees in the unit I have found to be appropriate.

DECISION

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. **Hearing and Procedures:** The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. **Jurisdiction:** At the hearing, the parties stipulated, and I find, that the Employer, a labor organization, is an unincorporated association with an office and place of business in Las Vegas, Nevada, where it represents employees in collective bargaining with employers. During the past 12-month period, it collected and received dues and initiation fees in excess of \$100,000, and remitted from the Employer's facility to the Washington, D.C. facility of the Hotel Employees and Restaurant Employees International Union, and the New York, New York facility of UNITE Hotel Employees and Restaurant Employees International Union, in per capita taxes in excess of \$50,000. The Employer is engaged in commerce within the meaning of the Act, and, therefore, the Board's asserting jurisdiction in this matter will accomplish the purposes of the Act. See *Oregon Teamsters' Security Plan Office*, 119 NLRB 207 (1955); *Laundry, Dry Cleaning and Dye House Workers' International Union Local 26*, 129 NLRB 1446 (1961).

3. **Claim of Representation and Labor Organization Status:** The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. **Statutory Question:** As more fully set forth below, a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. **Unit Finding:** There are three primary issues in this proceeding: (1) whether Data-Entry employees, Cashiers, Accounting Department employees, and Secretaries should be excluded from the unit because they are either confidential and/or office clerical employees; (2) whether Political Department and Maintenance employees should be excluded from the unit because they lack sufficient community-of-interest with employees in the petitioned-for unit; and (3) whether Trainers are supervisors within the meaning of the Act. I find that the Employer's Data-Entry employees, Cashiers, Accounting Department employees, and Secretaries are not "confidential" employees; that the Political Department and Maintenance employees share a community-of-interest with the petitioned-for unit; that the Accounting Department employees and the Secretaries are office clerical employees; and that, based on the current record, there is insufficient evidence to determine whether the Trainers are supervisors within the meaning of Section 2(11) of the Act.

To provide a context for my decision, I will first provide an overview of the Employer's operations, followed by a description of the positions in dispute and their

respective working conditions. I will then present the case law and the reasoning that support my conclusions on these issues.

A. The Employer's Operations

The Employer is a labor organization that provides collective-bargaining representation for groups of employees in the Las Vegas, Nevada, casino, hotel and restaurant industry. There are two groups of employees at the Employer's Las Vegas facility: (1) office employees whose work takes place primarily at the Employer's facility and (2) field employees whose work takes place primarily away from the Employer's facility. The office employees include the following: Accounting employees, Cashiers, Secretaries, Maintenance employees, Dispatchers, Computer Support employees, and Orientation employees. The field employees include the following: Union Organizers (including Trainers), Grievance employees, Member Service employees, Research employees, and Political Department employees.

Two elected leaders share responsibility for the Employer's overall operations, Secretary-Treasurer D. Taylor and President Geoconda Arguello-Kline. Four directors report directly to Taylor and Arguello-Kline: Director of Legal Affairs Jim Bonaventure, Staff Director Kevin Kline, Internal Staff Director Ted Pappageorge, and Controller Mike Lewis. In turn, eight department heads report directly to these four directors: Wanda Henry (Director of Operations), Ardell Roberts, Norbert Kubiak, Johann Dalton, Kara Kelly, Rosa Madrid, and Research Directors Chris Bohner, and Maya Holmes.

Controller Lewis, assisted by Director of Operations Henry, oversees the office employees. Lewis provides direct supervision to Maintenance, Computer Support, Accounting, and Cashier employees, while Henry provides direct supervision to Orientation, Data-Entry, Dispatch, and Secretarial employees. Additionally, Secretaries are assigned to work for specific managers, who also provide direct supervision to that particular secretary.

Pappageorge supervises the Organizers (referred to as "internal Organizers") who are assigned to represent employees at properties where the Employer has negotiated a collective-bargaining agreement. Four department heads work directly under Pappageorge and each head is assigned a team of internal Organizers to supervise. Arguello-Kline supervises the Organizers (referred to as "external Organizers") who are assigned to organize workers at non-union properties. Department Head Madrid works under Arguello-Kline and supervises a team of external Organizers.

Finally, Taylor, Arguello-Kline, and Kevin Kline supervise the employees in the Political and Member Services Departments, and Bohner and Holmes supervise employees in the Research Department.

The Employer operates out of a two-story building with a trailer hub located nearby. This trailer hub contains additional office space for employees because the main office building lacks sufficient space. In the main office building, most of the employees are officed on the first floor. Secretaries and Data-Entry employees are dispersed throughout the first

floor. In contrast, Organizers, Dispatchers, Orientation employees, Cashiers, and Computer Support employees tend to be grouped in specific areas of the building. Research and Political Department employees are located on the building's second floor, along with a conference room, break room, and meeting hall. Office vacancies are filled through a seniority bid system, open to all employees regardless of their department. All employees share a community parking lot, which does not have any designated or reserved spaces for any particular classifications of employees.

All employees check in daily with the receptionist at the reception desk, which is situated so anyone entering the Employer's facility will pass by that desk. Office employees are required to punch in and out at a time clock, which is located at the reception desk. Field employees do not use this time clock, but must still call in to the receptionist every day.

All employees use the same break room, attend the same weekly staff meeting, and attend the same office social functions. Similarly, all employees receive the same life insurance benefits, health and welfare benefits, vacation, sick days, leave benefits, disability insurance, and participate in the same 401(k) retirement and pension plan. All employees receive identical raises every year, based on the raise the Employer's members who work in the Las Vegas Strip hotels receive.

On the other hand, office and field employees are paid differently and tend to work different hours. Office employees are paid hourly wages, and generally work 8:00 a.m. to 4:00 p.m., Monday through Friday. In contrast, field employees receive salaries and work variable hours.

B. Employees in the Petitioned-For Unit

The Petitioner seeks to represent a specific unit that includes various office and field employee classifications. With respect to office employees, the Petitioner seeks to include employees who work in the Dispatch, Orientation, and Computer Support Departments. Dispatch Department employees send individuals seeking work out on job referrals and provide office supplies to employees. Orientation employees are responsible for meeting with new members and other individuals to explain how the Employer functions and for conducting larger group meetings with new members to explain benefits and other information. Computer Support employees maintain the Employer's computer hardware and network infrastructure.

With respect to field employees, the Petitioner seeks to represent Grievance Specialists, Member Services employees, Research Department employees, and Organizers. Grievance Specialists process grievances filed by the Employer's members and represent the members during the course of those grievances. Member Services employees provide assistance to members in a wide range of matters, including unemployment claims, immigration issues, workers' compensation claims, and grievances. They also work with community organizations and provide flyers, brochures, and other written communications to members. Research Department employees focus on campaigns to persuade employers to

enter into card check³ or collective-bargaining agreements and develop strategic plans to promote legislation helpful to the Employer's interests.

Finally, the Employer's 30-35 Organizers – who spend most of their day away from the Employer's facility – are responsible for recruiting and training members to become shop committee leaders at the different properties where the Employer represents employees and for enforcing collective-bargaining agreements. Organizers meet with members and non-members, visit prospective members at their homes, assist with strikes (both in and out of town), and perform any other networking activity necessary to maintain and gain membership. The Employer divides its Organizers into teams, and each team is assigned specific properties to service. Each team reports to a specific department head, who meets every day with his or her team to review work to be done, who the Organizers will be meeting with, and the previous days' accomplishments. The department heads also give training assignments to their respective teams, and develop scripts⁴ (known as "RAP") that Organizers refer to when speaking with members or other individuals. Each Organizer submits a weekly report to his or her department head.

Supplementing the Organizers are approximately ten "leave of absence" organizers (LOA). These organizers are not employed by the Employer. Rather, they are members who take three- to six-month leaves of absences from their respective employers so that they can work as an organizer for the Employer. The parties stipulated, the record evidence supports, and I find, that the LOAs should be excluded from the unit because they lack a community-of-interest with the Employer's permanently-employed employees.

Within the classification of Organizers are seven employees whom the Petitioner sometimes refers to as "leads" or "leads in training." As noted above, the Petitioner seeks to exclude these employees from the unit as supervisors. The record indicates that the Employer does not currently classify employees as leads or leads in training, and ceased using these terms several years ago. Instead, the Employer now calls these seven employees "Trainers." Regardless of the term used (for purposes of this decision, I will call these employees "Trainers") these employees are generally the most experienced Organizers of the Employer's Organizers, with an average of nine years experience. Trainers are placed on different teams, and they are each given one or two Organizers to assist them. The conflicting evidence relating to Trainers' specific duties will be discussed in greater detail below.

C. Employees in Disputed Classifications

1. Cashiers

The Employer employs three Cashiers. They are directly supervised by Controller Mike Lewis, and are all officed on the first floor near the accounting department. Their

³ A card check is a procedure used in lieu of an election in which signatures on union authorization cards are compared to signatures of employees on the employer's payroll documents to determine whether a majority have selected the union. See Hardin, *The Developing Labor Law*, at 524 (3rd ed.).

⁴ These "scripts" are basically text and points to emphasize that organizers use to persuade potential members of the benefits of joining the Union.

primary duty is to accept payments from members and individuals seeking job referrals and to place dues and other payments in bank bags at the end of the day so that they may be taken to the bank. Cashiers are also trained to perform data-entry functions, including entering change of address, new member sign-up, and phone number change information into the Employer's database. Cashiers are further trained to work as dispatchers, and substitute for regular Dispatchers when needed. Cashiers interact with Dispatch, Orientation, and field staff employees to the extent those employees send members and other individuals to the Cashiers to pay registration fees and dues. While Cashiers have access to members' phone numbers and addresses, there is no record evidence that they share a confidential relationship with management in the labor relations field or assist or act in a confidential capacity to managers.

2. Data-Entry Employees

The Employer employs five Data-Entry employees. They are directly supervised by Director of Operations Wanda Henry (who reports directly to Controller Lewis) and are officed at various locations throughout the first floor of the Employer's main building. These employees are responsible for entering data about members, such as new hire information, address changes, and demographic information, into the Employer's database. Data-Entry employees are cross-trained to perform the work of Cashiers and Orientation employees. All current Data-Entry employees transferred from field employee positions. While Data-Entry employees have access to members' phone numbers and addresses, there is no record evidence that they share a confidential relationship with management in the labor relations field or assist or act in a confidential capacity to managers.

3. Accounting Department Employees

There are three employees in the Accounting Department -- Finance Manager Robyn Hughes and two clerks. The parties agree, the record evidence supports, and I find, that Hughes should not be included in the unit because she is a confidential employee. According to the Employer, the two clerks should be included in any unit found to be appropriate.

The Accounting Department clerks handle payroll functions for all employees and, in that capacity, have access to employees' paychecks and other private information, such as social security numbers, home addresses, phone numbers, and wage information. The clerks are also responsible for paying and posting accounts payable and maintaining pay invoice files. The record lacks any evidence that the clerks share a confidential relationship with management in the labor relations field or assist or act in a confidential capacity to managers.

All three Accounting Department employees are directly supervised by Controller Lewis, who, as previously noted, also directly supervises the cashiers and computer support employees. The Accounting Department employees are located on the first floor of the Employer's main building, near the orientation employees. Interaction between Accounting Department employees and other employees is limited mostly to pay issues and the provision of printer cartridges. Also, field employees receive reimbursements for their automobile insurance through the Accounting Department. In the past, Secretaries have permanently transferred into the accounting department.

4. Secretaries

The Employer employs a total of nine Secretaries, all of whom are supervised by Director of Operations Henry and the particular manager to whom they are assigned. The parties have stipulated, the record evidence shows, and I find, that there are two Secretaries who are confidential employees and should, therefore, be excluded from the unit: Legal Secretary Rhonda Wainscott, who works for the Employer's Director of Legal Affairs, and Executive Secretary Margarita Farmer, who works for Secretary-Treasurer D. Taylor. The confidential status of the remaining seven Secretaries is in dispute. Their specific classifications and duties are as follows:

a. Translator. The Translator/Secretary reports directly to Henry. This person is responsible for translating contracts, flyers, and other communications for other employees and managers.

b. Grievance Secretary. The Grievance Secretary provides secretarial services to the grievance department and translates Spanish language grievances.

c. Staff Director Secretary. The Staff Director Secretary provides basic secretarial services to Staff Director Kevin Kline, and maintains and schedules the conference room at the Employer's facility.

d. Shredder. The Shredder is a part-time employee who works three days a week. This position is responsible for shredding documents. Specifically, the Shredder walks through the Employer's facility several times during the week, collects items in marked boxes, and shreds those items. She is stationed in one of the trailers in the trailer hub.

e. Executive Office Secretary. The Executive Office Secretary provides secretarial services to President Geoconda Arguello-Kline, including maintaining her schedule. This position is also responsible for handling members' requests for 25- and 35-year pins (including verifying eligibility), performing data-entry work, and scheduling staff to attend outside events.

f. Internal Staff Director Secretary. The Internal Staff Director Secretary reports to Internal Staff Director Pappageorge. She provides secretarial services for Pappageorge and makes his travel arrangements. She also provides secretarial services to the Employer's Organizers and is in charge of arranging child care for members for different meetings that take place at the Employer's facility, so that members with parental obligations may attend those meetings.

g. Switchboard Operator. The Switchboard Operator handles all incoming telephone calls and manages the Employer's telephone system. Employees also inform the switchboard operator when they are present at the facility or when they are taking time off, so that she can keep track of which employees are present at the

facility at any given moment. This position is further responsible for separating all incoming mail and placing it in the appropriate in-boxes and managing the hourly employees' time clock, which is maintained at her work station. The Switchboard Operator reports directly to Controller Mike Lewis. Accounting department employees are cross-trained to cover for the Switchboard Operator.

All seven of the above Secretaries interact with both field and office employees, although the record indicates that their interaction is limited to their specific work functions. These Secretaries are located throughout the facility, as opposed to one centralized location. The record is devoid of any evidence that these seven Secretaries share a confidential relationship with management in the field of labor relations or assist or act in a confidential capacity to such managers.

5. Maintenance Employees

The Employer employs a single Maintenance employee, who reports directly to Controller Mike Lewis. This position is responsible for maintaining the Employer's facility, which includes calling in contractors when there are problems with the air conditioning, plumbing, heating, etc. The Maintenance employee also serves as a runner by picking up documents from various locations outside of the Employer's facility. For example, the record reflects that, if a hotel fails to send in a report necessary to determine which hotel employees should have dues withheld, the Maintenance employee will be dispatched to the hotel to retrieve that paperwork. Additionally, when the Employer has meetings at its facility, the Maintenance employee is responsible for obtaining and filling orders for drinks and other refreshments and for setting up the meeting room. The Maintenance employee has been cross-trained to work in the political department, has traveled out-of-state to work on political campaigns, and has delivered flyers, brochures, drinks, microphones, and other equipment to rallies.

6. Political Department Employees

The Employer employs a single Political Department employee, known as the Political Director. This position reports to Staff Director Kline and Secretary-Treasurer D. Taylor. She works hand-in-hand with the Employer's Research Department and is responsible for lobbying for legislation that the Research Department believes will benefit the Employer. Indeed, the current Political Director transferred from the Research Department. The Political Director also works with Organizers, who sometimes together campaign, hand out literature, and canvass neighborhoods for the different candidates and legislation identified by the Research Department. Employees in the Research and Political Departments typically possess college and/or graduate degrees.

7. Trainers

The Petitioner, which initially asserted that there existed 12 leads or leads in training, ultimately identified seven such employees: Juana Castillo, Gilberto Guereque, Kim Normand, Mirna Preciado, Elodia Rodriguez, Nohemi Torres, and Jimmy Sanders. The

Employer contends that this classification was eliminated years ago and that the appropriate nomenclature for these employees is “Trainer.” The Employer further contends that Trainers belong in the same job category as other Organizers. The record reflects that these employees appear to be the most senior Organizer employees, with an average of nine years of experience:

Trainer	Approximate Year of Hire
Naomi Torres	Mid 1990s
Elodia Rodriguez	1997-99
Jimmy Sanders	1991-92
Kim Norman	Mid 1990s or earlier
Juana Castillo	Late 1990s
Gilberto Gueregue	Late 1990s or early 2000s
Mirna Preciado	1997-99

The Employer also contends that Sanders has transferred to the Member Services department, which is included in the petitioned-for unit.

Historically, the Employer did not have any training program for Organizers, although more experienced Organizers tended to assist new Organizers. This changed in January 2005. After several Organizers asked for more training to help them carry out their duties, the Employer implemented a formal training program. As previously noted, based on the present record, the exact responsibilities and duties of the Trainers, including their roles in training new Organizers, cannot be determined because of conflicting evidence, which I shall now describe.

a. Evidence Indicating that Trainers Have
Some Supervisory Authority

Several Organizers testified that Trainers have, on occasion, changed their work schedules, granted time off, allowed them to leave early, or determined when they could take lunch. Specifically, Organizer Allan Ruiz testified that Cesar Armenta, formerly employed as a Trainer, instructed him to work at midnight and various other hours of the day to meet with members and prospective members. Similarly, Organizer Jesus Briones testified that Trainer Mirna Preciado changed his schedule to accommodate house and other visits, and that Preciado further told him that he could not leave work to perform personal errands, such as paying a late utility bill. Organizer Daniel Ramirez testified that Trainer Kim Norman changed his schedule by, for example, telling him that he would have to take later lunches so that they could complete certain tasks. The record also contains documentary evidence indicating that Trainer Gilberto Gueregue authorized floater days off for Adan Lopez and a “doctor’s day” off for another employee, that, while a Trainer, Armenta also authorized time off for Ruiz, and Trainer Juana Castillo wrote authoritatively on leave request forms.

There is also record evidence indicating that Organizers are required to report to their Trainers each day, and that they have been instructed that the Trainers are their supervisors.

For example, Organizer Guadalupe De la Rosa testified that she reported to Preciado every day and had to call her if she was ill. She also testified that Department Head Rosa Madrid told her that she had divided the Organizers into groups and that De la Rosa would be supervised by Preciado. Similarly, Organizer Alfred Zecena testified that he considered Guereque to be his supervisor because Guereque received the daily report logs and schedules from the Organizers on his team. Briones testified that Department Head Joanna Dalton told him that he had to report to Preciado each day, that he had to tell Preciado where he went and how many cards he collected, and that he had to give Preciado his weekly schedule. Ramirez testified that Kim Norman told him that Norman was his supervisor, and that he is required to give Norman a copy of his weekly schedule every Monday. Similarly, Regla Cancino testified that Trainer Elodia Rodriguez gave her daily assignments and made her schedule.

The record also includes some evidence that Trainers provide daily feedback to employees and have some input into employee evaluations. In particular, Trainer Juana Castillo testified that she has participated in her team members' evaluations. De la Rosa also testified that Preciado provided feedback concerning her ability to lead and organize hotel workers. This is consistent with Preciado's testimony that she lets Organizers on her team know how they are developing and, an exhibit that reflects she evaluated an LOA. Additionally, the Employer's employee handbook states that daily interaction with an employee's department head or "team leader" should give employees "a sense of how we perceive your performance." Finally on this point, the record evidence includes a written evaluation completed by Preciado for a LOA.

Organizer Regla Cancino testified that Trainer Elodia Rodriguez reported to Department Head Ted Pappageorge that Cancino failed to show up at the Bellagio resort for a pre-arranged meeting with Rodriguez and that she did not call Rodriguez to let her know she would not be there. Cancino had just begun working at the Bellagio, and she was assigned to "shadow" Rodriguez, who had been assigned to that property for approximately five years. Cancino was given a disciplinary suspension by Department Head Ardella Roberts because of this "no show, no call" incident. The Employer relied on Trainer Rodriguez' report of misconduct to discipline Cancino and there is no evidence that the Employer conducted any independent investigation of the matter before issuing discipline to Cancino. The Employer terminated Cancino approximately five months later.

The record also includes an Employer-created document, dated November 19, 2004, which lists the seven Trainers at issue under the caption "department heads." This document was provided to Rennell Williams who, at the time, was a grievance intake person, by either Jim Bonadventure or Esther Dyer. Castillo testified that, if her LOA had a problem with his paycheck, she would look into the matter.

Finally, Trainers, when they were known as leads or leads in training, received a higher level of pay to compensate them for their training duties. Their compensation was kept the same, or "grandfathered," when the lead or lead in training classification terminology was eliminated in favor of the "Trainer" designation. Juana Castillo, however, testified that she did not receive any extra money for performing training duties. The record does not reflect the wages of the Trainers, nor of the Organizers.

b. Evidence Indicating Trainers Lack
Supervisory Authority

Evidence presented by the Employer, on the other hand, suggests that Trainers lack any supervisory authority. Staff Director Kevin Kline testified that Trainers lacked the authority to discipline employees or effectively recommend discipline for employees, and the record contains limited evidence otherwise. Kline also testified that Trainers are not authorized to alter employees' schedules or approve time off, that they must still report their whereabouts to the receptionist, and that department heads must approve any of their time off. He specifically testified that Guereque was not authorized to sign the time-off forms described above.

The record also indicates that Trainers receive the same pay raises as are granted to all the employees. Further, Trainers do not have special offices or keys to the Employer's facility. When an office is vacated, Trainers bid for the office along with all other field staff. It is unclear whether Trainers attend weekly department head meetings. De la Rosa testified that Trainer Preciado admitted to her that she went to a management meeting, but another Trainer, Castillo, denied that she, Castillo, had attended management meetings.

D. Legal Analysis and Determination

**1. Data-Entry Employees, Cashiers, Accounting
Employees, and Secretaries Are Not Confidential
Employees**

The Petitioner contends that the Employers' Data-Entry employees, Cashiers, Accounting employees, and Secretaries are confidential employees and, therefore, should be excluded from the unit. The Petitioner bears the burden of proof on this issue. See, e.g., *Queen Kapiolani Hotel*, 316 NLRB 655, 664-665 (1995) (party seeking to exclude an individual from voting for a collective-bargaining representative has burden of establishing that individual is ineligible to vote.)

The Board has held that confidential employees are persons "who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations." *E.C. Waste, Inc.*, 339 NLRB 262, n. 1 (2003), *enfd.*, 359 F. 3d 36, 174 LRRM 2417 (2004)(quoting *NLRB V. Hendricks County Rural Electric membership Corp.*, 454 US 170, 189(1981)); *B.F. Goodrich*, 115 NLRB 722 (1956); *NLRB v. Hendricks County Rural Electric membership Corp.*, 454 US 170 (1981) (Supreme Court expressly approves Board's definition of "confidential employee"). See also *Ladish Co.*, 178 NLRB 90 (1969); *Chrysler Corp.*, 173 NLRB 1046 (1969). The record establishes that the data-entry employees, cashiers, accounting employees, and secretaries at the Employer's facility are not involved in labor relations or collective-bargaining matters. Although these employees may have some access to confidential information regarding employees, such as their home addresses, phone numbers, and social security numbers, these matters do not deal with labor relations matters or management policies. The confidential information must have

a “labor nexus.” *Hendricks County Rural Electric Membership Corp.*, supra. Here, the employees in question do not assist in the preparation of, and do not have access to, confidential labor relations information, such as data in preparation for contract negotiations, minutes of negotiating sessions and grievance investigation reports, which is a factor upon which the Board relies. *Firestone Synthetic Latex, Co.*, 201 NLRB 347 (1973). Further, the Board has held that an employee’s access to personnel records or the fact that the employee can bring information, which may ultimately lead to disciplinary action, to management’s attention is insufficient to qualify an employee as confidential. *RCA Communications*, 154 NLRB 34, 37 (1965). See also *S.S. Jachim & Anne Residence*, 314 NLRB 1191 (1994); *Lincoln Park Nursing Home*, 318 NLRB 1160 (1995).

Based upon the foregoing, I find that the Data-Entry employees, Cashiers, Accounting employees, and Secretaries are not confidential employees. For reasons discussed below, however, only the Data-Entry employees and Cashiers should be included in the unit.

**2. Political Department and Maintenance Employees
Share a Community-of-Interest With the Petitioned-For
Unit and, Therefore, Should be Included in the Unit**

I find that the Political Director shares a significant community-of-interest with the unit found appropriate herein. In reaching this conclusion, I note that the Political Director’s duties require her to have daily and substantial contact with other employees within the unit, specifically the Research Department employees. She has common supervision with the Organizers, and there is substantial integration between the functions associated with her position and the functions of the other areas of the facility. The Political Director, in conjunction with the research specialists, determines which political candidates should be supported for local, state and federal government positions and which legislation should be promoted. The Organizers, as well as other unit staff, provide assistance in this effort by preparing flyers, holding rallies, and canvassing neighborhoods. In view of these factors and her substantial daily interaction with other employees, I will include the Political Department employees in the unit found appropriate herein.

Similarly, I find that the Maintenance employee shares a significant community-of-interest with the unit found appropriate herein, based upon his dual functions as a traditional maintenance employee and duties in support of several areas of the field operations. In reaching this conclusion, I note that the Maintenance employee is supervised by Controller Mike Lewis, who also supervises the Accounting employees, Cashiers, and the Computer Support employees. Notably, the Computer Support employees are included in the petitioned-for unit. I further note that the Maintenance employee provides support to the rest of the employees. He maintains the electricity, air conditioning and heating of the facility. He also obtains refreshments and materials to other employees, prepares the meeting room for events held for members by Member Services employees, Orientation employees, and Organizers, and supplies the needed equipment to outside functions. He is also responsible for retrieving paperwork from the various properties represented by the Employer for needed reports. Finally, the Maintenance employee has assisted the Political Director and has traveled out of state to work on particular political campaigns. Based upon these factors

alone, I find that the Maintenance employee shares a substantial community-of-interest with others in the unit found appropriate herein, and, I will include this job classification in the unit. Moreover, to leave the Maintenance employee out of the unit, found appropriate herein, would leave the Maintenance employee alone with no other feasible group of employees to form a bargaining unit with. This would result in a one-person unit, whose certification would be contrary to Board policy, *Mount St. Joseph's Home for Girls*, 229 NLRB 251 (1977), depriving the Maintenance employee of his rights under Sections 7 and 9 of the Act. For these additional reasons, and because the Petitioner has not articulated any valid reason for excluding the Maintenance employee from the unit, I conclude that the Maintenance employee's inclusion in the unit is warranted.

3. Accounting Employees and Secretaries Are Office Clericals Who Should be Excluded from the Unit

Under the community-of-interest rule, the Board excludes office clerical employees from a production and maintenance unit, while it includes plant clerical employees Cf. *Hygeia Coca-Cola Bottling Co.*, 192 NLRB 1127, 1129 (1971); *Westinghouse Electric Corp.*, 118 NLRB 1043 (1957); *Raytec Co.*, 228 NLRB 646 (1977); *Armour and Co.*, 119 NLRB 623 (1957). In the typical case, plant clerical duties include "timecard collection, transcription of sales orders to forms to facilitate production, maintenance of inventories, and ordering supplies." *Hamilton Halter Co.*, 270 NLRB 331 (1984). In contrast, the typical duties of office clerical employees include billing, payroll, phone, and mail. *Dunham's Athleisure Corp.*, 311 NLRB 175 (1993); *Hamilton Halter Co.*, supra; *Mitchellace, Inc.*, 314 NLRB 536 (1994); *PECO Energy Co.*, 322 NLRB 1074 (1997) (public utility production & maintenance unit).

As the record demonstrates, the Accounting employees' work duties are focused on payroll and billing. Their interaction with other employees, besides the Secretaries, is limited to issues regarding payroll and automobile reimbursements, with a small portion of their time providing printer cartridges for computer equipment. The Accounting employees perform the traditional work associated with that of an office clerical employee. *Mitchellace*, supra; *PECO energy*, supra. I find that the Accounting Department employees are "office" clericals and will exclude them from the unit found appropriate herein.

Similarly, the seven Secretaries' work duties are ancillary to the administrative functions of assisting certain departments and Directors. Their interaction with other employees is very limited. Their duties are primarily filing, typing, mailing letters, answering phones, assisting and coordinating travel arrangements, reserving meeting rooms, translating documents, shredding documents, and working primarily under a specific Director's direction and supervision. These duties are those traditionally associated with that of office clerical employees. In view of these factors, I find that these Secretaries are office clericals and will

exclude them from the unit found appropriate herein.⁵

4. The Record Is Unclear and Inconsistent Regarding Whether Trainers Are Statutory Supervisors

Section 2(11) of the Act defines the term “supervisor” as:

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature, but requires the use of independent judgment.

The possession of any one of these authorities is sufficient to deem the employee vested with such authority as a supervisor. *Allen Services Co.*, 314 NLRB 1060 (1994); *Big Rivers Electric Corp.*, 266 NLRB 380, 382 (1983). Persons with the power “effectively to recommend” the actions described in Section 2(11) are supervisors within the statutory definition. *Sun Refining & Marketing Co.*, 301 NLRB 642, 649-650 (1991); *Custom Bronze & Aluminum Corp.*, 197 NLRB 397 (1972). “Without question, an individual who can discipline employees or effectively recommend their discipline is a statutory supervisor.” *Tree-Free Fiber Co.*, 328 NLRB No. 51 slip op. at p. 4 (1999) (citing *Northcrest Nursing Home*, 313 NLRB 491, 497 (1993); *Superior Bakery*, 294 NLRB 256, 262 (1989). The burden of proving supervisory status is on the party that alleges that it exists. *St. Francis Medical Center West*, 323 NLRB 1046 (1997). Thus, the burden of establishing supervisory status lies with the Employer.

Although not dispositive of the issue of supervisory status, non-statutory indicia can be used as background evidence on the question of supervisory status. See *Training School of Vineland*, 332 NLRB 1412 (2000); *Chrome Deposit Corps.*, 323 NLRB 961, 963 fn. 9 (1997). As the Board has explained, nonstatutory indications of supervisory status (or “secondary indicia”), such as higher pay, supervisor to nonsupervisor ratios, or inclusion in supervisor meetings, may bolster evidence demonstrating that employees otherwise exercise one of the powers listed in the statute. See *Marian Manor for the Aged and Infirm*, 333 NLRB No. 133, (2001); cf. *Ken-Crest Services.*, 335 NLRB 777 (2001).

⁵ In contrast, the work duties of the Cashiers and Data-Entry employees in this case are not clerical duties. These employees deal with information and monies from the union members and are an integral part of the functions of the other office employees and field staff. There exists a daily and substantial degree of operational and functional interchange between Cashiers and Data-Entry employees and the other employees, including the Member Services employees, the Orientation employees, Dispatchers, and Organizers. The members are brought to Cashiers to pay dues and registration fees by the Member Services employees, Orientation employees, Dispatchers and Organizers. The Data Entry employees maintain and update the data base of the membership. There is no record evidence that indicates that these two classifications perform traditional clerical duties.

In this case, I do not have sufficient evidence to make a determination as to whether the Trainers are supervisors. On the one hand, the record contains some evidence that Trainers can change other employees' schedules and grant time off; that employees are required to report their work activities to Trainers on a daily basis; that Trainers assign work to, and prioritize work for, other employees; that employees have been told that Trainers are their supervisors; that Trainers provide feedback to employees and have input into evaluations; and that they have been listed as department heads in an Employer-created document. On the other hand, the record also contains evidence suggesting that Trainers have no control over other employees' schedules or time off, that they do not discipline other employees, or otherwise exercise substantial supervisory authority.

Based upon these inconsistencies, I will allow the Trainers to cast ballots in the election subject to timely lodged challenges.

E. Conclusion

Based upon the foregoing, I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and regular part-time Organizers, Grievance Specialists, Political Department employees, Research Department employees, Member Services employees, Dispatchers, Orientation employees, Cashiers, Data-Entry employees, Computer Support employees, and Maintenance employees employed by the Employer at its facility located in Las Vegas, Nevada.

EXCLUDED: All Accounting Department employees, Secretaries, including translators, shredders, and switchboard operators, Leave-of-Absence interns (LOAs), confidential employees, guards, and supervisors as defined in the Act.

There are approximately 67 employees in the unit found appropriate.

At the hearing, the Petitioner stated that it would proceed to an election in any alternate unit found appropriate. Inasmuch as the unit found appropriate herein is larger than the unit sought by the Petitioner, the holding of an election will be conditioned upon a demonstration by the Petitioner, within 14 days from the date hereof, that it has an adequate showing of interest in the broader unit found appropriate. The Petitioner shall be permitted to withdraw its petition without prejudice upon written notice to the Regional Director for Region 28 within 14 days from the date of this Decision and Direction of Election. *Independent Linen Service Company of Mississippi*, 122 NLRB 1002 (1959).

DIRECTION OF ELECTION

I direct that an election by secret ballot be conducted in the above unit at a time and place that will be set forth in the notice of election, which will issue soon, subject to the Board's Rules and Regulations and a demonstration by the Petitioner that it has an adequate showing of interest in the unit found appropriate. The employees who are eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Also eligible are those in military services of the United States Government, but only if they appear in person at the polls. Employees in the unit are ineligible to vote if they have quit or been discharged for cause since the designated payroll period; if they engaged in a strike and have been discharged for cause since the strike began and have not been rehired or reinstated before the election date; and, if they have engaged in an economic strike which began more than 12 months before the election date and who have been permanently replaced. All eligible employees shall vote whether or not they desire to be represented for collective-bargaining purposes by:

FEDERATION OF UNION REPRESENTATIVES (FOUR)

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues before they vote, all parties in the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director of Region 28 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The list must be of sufficiently large type to be clearly legible. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

In order to be timely filed, the undersigned must receive the list at the National Labor Relations Board Regional Office, 600 Las Vegas Boulevard, S., Suite 400, Las Vegas, Nevada, 89101-6637, on or before September 1, 2005. No extension of time to file this list shall be granted nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission.

Since the list is to be made available to all parties to the election, please furnish a total of 2 copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.)

If you have any questions, please contact the Regional Office.

RIGHT TO REQUEST FOR REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. The Board in Washington must receive this request by September 8, 2005. A copy of the request for review should also be served on the undersigned.

Dated at Phoenix, Arizona, this 25th day of August 2005.

/s/Gordon J. Jorgensen

Gordon J. Jorgensen, Acting Regional Director
National Labor Relations Board - Region 28